In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-645

JOSEPH BRIOLA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the District of Colorado petitioner was convicted of having attempted to collect an extension of credit by extortionate means, in violation of 18 U.S.C. 894(a). He was sentenced to eight years' imprisonment subject to the parole eligibility provisions of 18 U.S.C. 4208 (a)(2). The court of appeals affirmed with one judge dissenting (Pet. App. 1a-1h).

Petitioner alleges here that the evidence was insufficient to sustain a conviction under 18 U.S.C. 894; he claims that while the evidence may have established "the *creation* of an extension of credit by extortionate

means, * * * there is absolutely no evidence to indicate * * * [the] use [of] extortionate means to *collect* an extension of credit" (Pet. 5). Petitioner also claims that since the extortionate act—a physical beating—was administered by his partner in a bookmaking operation, he personally cannot be held responsible for it, even though the beating related to a "business" debt and petitioner was present during the assault. The opinion of the court of appeals thoroughly considered and properly rejected these contentions.[1] We rely on that opinion here in urging that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

DECEMBER 1972.

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[1] The cases cited by petitioner (Pet. 6) in support of his contention that he is not liable for criminal acts of his partner are inapposite. In both *United States* v. *Ward*, 168 F. 2d 226 (C.A. 3), and *United States* v. *Quinn*, 141 F. Supp. 622 (S.D.N.Y.), the courts did no more than recite and apply the proposition that "a partner is not chargeable with [criminal] acts of his co-partners unless he has knowledge" (141 F. Supp. at 627). Here, as the court of appeals held, petitioner "cannot escape responsibility for the beating which was inflicted by his partner Clapes in his presence since he was shown to have been standing by lending support to the activity of Clapes" (Pet. App. 1f). Petitioner's further claim that he could not be convicted, despite these facts, because the indictment charged him "specifically" with causing physical harm (Pet. 6), and not of aiding and abetting, is without merit. See *Theriault* v. *United States*, 401 F. 2d 79, 85 (C.A. 8), certiorari denied, 393 U.S. 1100, and cases cited; *United States* v. *Trollinger*, 415 F. 2d 527, 529, n. 4 (C.A. 5).

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